Tho: Trotter's

AN IMPARTIAL ACCOUNT OF THE TRIAL OF THE LORD CONWALLIS.

LONDON;
Printed in the Year. 1679.

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AFTER my Lord High Steward was aſcended to the High Chair of State, and ſate down therein, the Commiſſion was delivered by the Clerk of the Crown in the Chancery to my Lord on his Knees, who delivered it to Sir *Thomas Fanſhaw* Clerk of the Crown in the Kings Bench Office, and he received it kneeling.

Then Proclamation was made by the Serjeant at Arms who was Cryer for the day.

Serjeant. O Yes, O Yes, O Yes. My Lord High Steward of *England* ſtrictly chargeth and commandeth all manner of Perſons here preſent upon pain of Impriſonment, to keep ſilence and give Ear to his Majeſties Commiſſion, To my Lord High Steward of *England*, to his Grace directed.

The Clerk of the Crown with his Face to my Lord High Steward Reads it thus,

Clerk of the Crown. Charles Rex Carolus Secundus, &c.

All which time my Lord and the Peers ſtood up bare.

Serjeant. God ſave the King.

Cl. Cr. Make Proclamation.

Serjeant. O Yes, The King at Arms, and the Uſher of the *Black Rod* on their Knees deliver the White Staff to my Lord, who re-delivered it to the Uſher of the *Black Rod*, who held it up all the time before him.

Cl. Cr. Make Proclamation.

Serjeant. O Yes. My Lord *High Steward* of *England* ſtrictly chargeth and commandeth all Juſtices and Commiſſioners, and all and every perſon and perſons to whom any Writ or Precept have been directed for the certifying of any Indictment, or of any other Record before my Lord *High Steward* of *England* to certifie and bring the ſame immediately according to the Tenor of the ſaid Writs and Precepts unto them, or any of them directed on Pain and Peril as ſhall fall thereon.

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The Lord Chief Juſtice of the Kings Bench return'd his *Certiorari*, and the Record of the Indictment by the Grand Jury of *Middleſex*, which was read by the Clerk of the Crown, *in hæc verba.*

Cl. Cr. / *Virtute*, &c.

L. H. Stew. Call the Conſtable of the Tower to return his Precept and his Priſoner.

Cl. Cr. Make Proclamation.

Serjeant. O Yes, Conſtable of the Tower of *London*, return the Precept to thee directed, and bring forth the Priſoner *Charles* Lord *Conwallis*, on Pain and Peril as will fall thereon.

The Lord Lieutenant of the Tower brought in the Priſoner on his left Hand, with the Axe before him, born by the Deputy Lieutenant, which he held with the Edge from him, and returned his Precept *in hæc verba.*

Cl. Cr. Virtute, &c.

L. H. Stew. Call the Serjeant at Arms to return his Precept.

Cl. Cr. Make Proclamation.

Serjeant. O Yes, *Roger Harfnet* Eſq; Serjeant at Arms to our Soveraign Lord the King, return the Precept to thee directed, with the Names of all the Lords and Noblemen of this Realm, Peers of *Charles* Lord *Conwallis* by thee ſummoned, to be heard this day, on pain and peril as will fall thereon.

He delivered his Precept return'd with a Schedule annexed thus;

Cl. Cr. Virtute, &c. Make Proclamation.

Serjeant. O Yes, All Marqueſſes, Earls, Vicounts, and Barons of this Realm of *England*, Peers of *Charles* Lord *Conwallis*, which by Commandment of the Lord *High Steward* of *England*, are ſummoned to appear this day, and to be preſent in Court, and to anſwer to your Names, as you are called, every one upon pain and peril as will fall thereon.

Then the Panel was called over, the number of Peers ſummoned were 35. in order as followeth,

Thomas Earl of *Danby*, Lord *High Treaſurer* of *England*, &c.

All that appeared, anſwered to the call, ſtanding up bare.

Then my Lord *High Steward* made a Speech to the Priſoner at the Bar thus,

Lord High Steward.

My Lord *Conwallis.*

The violation of the Kings Peace, in the chief Sanctuary of it, his own Royal Palace, and in ſo high a manner, as by the Death of one of his Subjects, is a matter that muſt be accounted for. And that it may be ſo, It hath pleaſed the King to command this High and Honourable Court to Aſſemble, in order to a ſtrict and impartial Enquiry.

The Wiſdom of the Law hath therefore ſtyled it the Kings Peace, becauſe it is his Authority that commands it, it is his Juſtice that ſecures it, it is he on whom Men do rely for the ſafety of their Liberties, and their Lives; in him they truſt that a ſevere Account ſhall be taken of all the Violences and Injuries that are offered to them, and they that truſt in the King can never be deceived.

It is your Lordſhips great unhappineſs at this time to ſtand Priſoner at the Bar, under the weight of no leſs a Charge than an Indictment of Murder; and it is not to be wondred at, if ſo great a misfortune as this be attended with ſome kind of confuſion of Face; when a Man ſees himſelf become

becom: a *Spectacle of Misery in so great a presence, and before so Noble, and so Illustrious an Assembly; But be not yet dismay'd my Lord for all this, let not the Fears and Terrors of Justice so amaze and surprise you, so as to betray those succours that your reason would afford you, or to disarm you of those helps which good discretion may Administer, and which are now extreamly necessary.*

It is indeed a dreadful thing to fall into the hands of Justice, where the Law is the Rule, and a severe and inflexible measure both of Life and Death. But yet it ought to be some comfort to your Lordships, that you are now to be tried by my Lords your Peers, and that now you see the Scales of Justice are held by such Noble hands, you may be confident they will put into them all the Grains of allowance, either Justice or Honour will bear.

Hearken therefore to your Indictment with quietness and attention, observe what the Witnesses say against you without interruption; and reserve what you have to say for your self, till it shall come to your turn to make your defence, of which I shall be sure to give you notice; and when the time comes, assure your self you shall be heard, not only with Patience, but with Candor too.

And then what Judgement soever my Lords will give you, your self will (and all the World) be forc'd to acknowledge the Justice and Equity of their Judgment, and the Righteousness of all their Lordships Proceedings.

Read the Indictment.

Cl. Cr. *Charles* Lord *Conwallis*, Thou standest Indicted in the County of *Middlesex* by the Name of, *&c.* How sayest thou *Charles* Lord *Conwallis*, Art thou guilty of this Felony and Murder whereof thou standest Indicted, Or not guilty?

Lord Comw. *Not Guilty.*

Cl. Cr. How wilt thou be tri'd?

Ld. Con. *By God and my Peers.*

Then my Lord *High Steward* addressed himself to the Lords thus,

Ld. H. Stew. *My Lords, Your Lordships have here a Member before you of your Noble Body, exposed to the shame of a publick Arraignment, and (which to a Man of Honour is much less) to the hazard, both of his Life and Estate; All that he hath and ever hopes to have, his Wealth, his Fame, his Posterity. All that is valuable to him in this World intirely depends on your Lordships Judicature, who are now his Peers, and on whom he doth freely put himself.*

My Lords, The Priviledge of this kind of Tryal and Judicature is a part of the true greatness of the English Nobility: It is an eminent and an illustrious Priviledge. It is a solid Point of Honour and Dignity. It is a Priviledge that no Neighbour Nation ever had, and a Priviledge this Nation never was without.

It is not a Priviledge Created by the Great Charter, but confest and acknowledged by it. They look but a little way that find this in the steps of the Norman Conquest, *for it is to be found even in the footsteps of the* Saxon *Monarchy, when* Godwyn *Earl of* Kent *was Tried by Earls and Barons. And it is no improbable conjecture of theirs, who do think the Wisdom of this Constitution was taken from that Law amongst the* Romans, *whereby it was made unlawful for any Man to sit upon a Senator, that was not himself of the same Order; a Priviledge, that (as learned Civilians tell us) continued with them during the Raign of many of the* Roman *Emperors. But, my Lords, as this is a Priviledge as antient as Monarchy, so we have found by many old Experiences, that it cannot be taken away with-*

out the dissolution of that Government: Therefore this is one of those many tyes by which the interest of the Nobility, as well as their duty, have obliged them to the Service of the King.

In the exercise of this Priviledge at this time, I know your Lordships will weigh the Fact with all the Circumstances, whereby it is to receive its true and its proper Doom. Your Lordships are too just, to let pitty make any abatement for the Crime, and too wise to let Rethorick make any Improvement of it: This only will be necessary to be observed by all your Lordships, that the fowler the Crime is, the clearer and the plainer ought the Proof of it to be. There is no other good reason can be given, why the Law refuseth to allow the Prisoner at the Bar Counsel in matter of Fact, when his Life is concerned, but only this, because the Evidence by which he is condemned, ought to be so very evident and so plain, that all the Councell in the world should not be able to answer it: upon this ground it is, that the Law hath trusted your Lordships with the Tryal of your Fellow Peers; no trust can be more noble, lodged, nor no Judicature had ever more true submission made to it: Therefore it would be to me some want of respect to this August and noble Assembly, should I go about to put your Lordships in mind of your Duty: no doubt you will observe the Evidence carefully, weigh it diligently, and when that is done, it is impossible but the Judgment you will give, must be Right and Honourable, and worthy of so wise and so great a Body; Therefore I will not detein your Lordships any longer, from hearing the Evidence that is ready to be offered unto you.

Cler. Cr. Make Proclamation.

Serj. O yes, if any will give Evidence for our Sovereign Lord the King, against *Charles* Lord *Conwallis*, Prisoner at the Bar, let him come forth, and he shall be heard; for the Prisoner stands at the Bar upon his deliverance.

The Indictment was again read to the Peers.

Serj. *Maynard.* Then Serj. *Maynard* the Kings Serj. at Law, began thus,

May it please your Grace, my Lord High Steward of *England* and this Greatand Noble Assembly;

The Prisoner at the Bar, *Charles* Lord *Conwallis* standeth indicted of a great Crime, that he togather with *Charles Gerrard*, and *Edward Bourne*, not having in his heart the fear of God, but instigated by the Suggestions of the Devil, the 18. of *May* last, did Felloniously and of his Malice forethought, assault one *Robert Clerk* in *Whitehall*, and that Mr. *Gerrard* took him up in his Arms, flung him down, and broke his Neck, of which he instantly died; to this he hath pleaded not guilty: It lies upon us who are Counsell for the King, in this case to prosecute it, and prove it to you.

Sir *William Jones* the Kings Attorney General then spake thus.

Attorn. Gener. May it place your Grace, my Lord High Steward of *England*, and my Lords summoned for the Tryal of the Prisoner at the Bar:

This Noble Lord stands Indicted for Murder; an Offence, my Lord, which is the first and greatest that is forbidden by the second Table, and an Offence of that nature, that the Law of God hath by a most Peremptory Sentence condemned and decreed, that whoso sheddeth mans Blood, by Man shall his Blood be shed. Whether this Noble Lord be guilty of it, remains upon your Lordships to try, and I shall very shortly state the matter of Fact, which we shall prove, and then let the Evidence be offered to you. We do not pretend, my Lords, neither doth the Indictment lay it, that this great Offence was committed by the haud of my Lord *Conwallis*. For I know your Lordships have observed the Indictment, by which it

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is alleadged that the hand of Mr. *Gerrard* did the Fact: But my Lords, if we shall make it out that my Lord *Connallis* did concur to this Act, and had in himself at that time an Intent to be a Murtherer; then it will be declared by his Grace my Lord High Steward, and my Lords the Judges, that though his hand did it not, yet he is equally guilty as if it had.

Now to make out the Charge against him, our Evidence will be shortly thus;

On the 18. of *May* last, Early in the Morning, between the hours of one and two, came down two Gentlemen with three Footmen behind them out of the Gallery at *Whitehall*, by the Stairs that lead down to the Park. I call them two Gentlemen, because it was not then discovered who they were, or of what quality, but your Lordships will perceive by the course of the Evidence, They were my Lord *Connallis* and Mr. *Gerrard* comming down at that unseasonable hour; the first Question they askt the Centinel (who watched at the Foot of the Staires) was the hour of the Night, and from him had accompt that it was so much.

The Prisoner and Mr. *Gerrard* were somewhat distempered with drink, and made him a reply that he lyed, with great Oaths accompanying it; at that time they did no more but go by him into the Park, where after they had continued by the space of an hour, back they returned to the Stairs, and the Centinel demanding, according to his Duty, who came there? They answered him in very obscene and uncivil Language, and threatned they would kill the Centinel, who only did his duty in enquiring who came by him at that time of night. And we shall make it appear they were in a kind of Contention among themselves, who should kill him; for as I am informed (I know if it be not proved, your Lordships will observe it) one desired, pray let me kill him; and the other desired, pray let me kill him, and threatned no less than to run him through.

My Lords, the Centinel being of a good resolution, was not affrighted from his place, but kept them off, and when they saw they could not win upon the Centinel that way, one of them delivered away his Sword which he held in his hand not drawn, and then was pelased to come to the Centinel, and desired to kiss him, and swore he would do that; but that the Centinel did equally refuse, and then they did use the same threatnings again, and seemed to be in a contention who should run him through. My Lords, after some time, being now come to the top of the Staires, and there staying, it hapned there came to the stair-foot two Youths, and these young Men were it seems going to Bed to their Lodging which was very neer, and did make it their request to the Centinel (one of them did) to call him up very early the next morning, because he was to go of a Message out of the Town. My Lord *Connallis* and Mr. *Gerrard* remaining on the Top of the Stair-Case, (being as we said) in disorder (which is the strength of the Kings Evidence if proved) both of them said before they went thence, they would kill some or other, which Evidence will go a great way to shew the concern that Noble Lord the Prisoner at Bar had in the Business.

It hapned as these Boys were making their request to the Centinel, my Lord and Mr. *Gerrard* took notice of it, and seemed to be concerned that they should command the Kings Souldiers, and bid the Centinel shoot him, who told them he conceived the Boy had done him no wrong in asking a

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Civil kindneſs from him, they again call'd to ſhoot him and they would bare him out ; which he ſtill refuſed to do, finding no reaſon for it then one of the two took occaſion to ſwear a great Oath, he would kick his arſe to Hell; to which the Boy that askt the Centinel made ſome reply, wherein the word arſe was repeated; now (whether they underſtood it as an Interrogation, why kick my arſe to Hell? as he intended it, or in a worſe ſence, kiſs my arſe) one of the Gentlmen in a rage came running down the Stairs and that Boy that in truth ſpoke the word run away, and the other poor innocent Boy truſting in his own Innocency remained there, until the Perſon came to him and did on his Knees, (in a manner) deſire not to be miſtaken, he was not the Perſon that uſed any ill words, and cryed out, O my Lord it was not I, indeed my Lord it was not I; but ſuch at that time was the Intemperance and wrath of the Perſon, who in ſuch a fury deſcending the Stairs that (whether with the Blow or the Fall) the Boy received his death. We find by our Information of the Evidence, that he who did the thing was in truth Mr. *Gerrard*, who is not yet taken ; but whether my Lord the Priſoner at the Bar did not concur in it, and had not an Intention to kill ſome body, is the queſtion left for your Grace and theſe Noble Peers to decide. This is the nature of the Fact ; only I deſire to obſerve, that it is true here was ſome diſtance between the place where my Lord *Conwallis* ſtood, and the place were the Boy was killed. Of what conſequence that may be, I leave to your Graces and theſe Noble Lords Conſideration; It was the diſtance of the Stairs ; But I think, as every one knows, they are not ſo many but what is done below may be eaſily ſeen at the Top.

We ſhall now without detaining your Lordſhips any longer, call the Witneſſes and prove what hath been opened ; The Souldier proved the Fact as it was opened by Mr. *Attorney General*, except that part about both ſwearing they would kill one or other, which Paſſage was heard but by one of them, and was ſpoken but by one of the Gentlemen.

They could not ſwear, who where the Perſons, becauſe of the darkneſs of the time.

The Boy who was the Companion of him that was ſlain, and that uſed the the words that cauſed the Perſon to come down, ſwore them to be a Repetition only by way of Interrogation, (why kick my arſe to Hell?)

Then Mr. *Attorney* deſired to call my Lord *Conwallis*'s own two Footmen who had been Indicted and acquitted at the Kings Bench Bar.

Lord High Stew. My Lords the Judges, is there any Queſtion whether a Perſon acquitted of an Offence be a good Witneſs againſt another charged with the ſame Offence?

Judges. None at all: wh en he is acquitted he ought to be admitted.

Then the Copy of the Acquittal (proved by a Clerk in the Crown Office) was read and then ſworn, who fixed it upon the Perſon of Mr. *Gerrard* and ſwore that my Lord *Conwallis* was all the while upon the Top of the Stairs,

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but after the Fact committed, hasted away for fear of being knock'd down by the Souldiers ; and there ended the Kings Evidence.

Lord High Stew. Now my Lord is the time come for your defence. You hear what is charged on you, Pray speak what you have to say for your self:

Ld. Connallis. Then the Prisoner at the Bar confessed himself to have been in the Company that Night when this accident hapned, which he hoped would be a warning to him to shun such disorders hereafter; but that he had no evil Intention, and but one witness swore that both of them would have killed the Centinel, that he was not conscious to himself to have had a hand in it, and therefore withdrew not himself, but yeilded himself to the Coroner the next day (which he proved by the Coroner himself) and did therefore in trust of his Innocency submit himself to the Judgment of his Grace and his Peers:

Which being done, Sir *Francis Winnington*, the Kings Solicitor General, summed up the Evidence in this manner;

Solicitor General. May it please your Grace, my Lord High Steward of *England*, and my Noble Lords the Peers of the Prisoner at the Bar.

According to the duty of my Place I am to repeat the Kings Evidence and state it to your Grace and these Noble Lords, and submit to your great Judgments how far it will go for the Proof of this Crime ; wherein I shall observe the Duty of all Honest Men, which is to do nothing either to wrest any thing in disadvantage of the Prisoner out of the Kings Evidence to goe farther than it ought, nor shall omit any thing that shall require your Grace and the Noble Lords Justice ; for we come to seek out the truth, and we question not but by this Honourable Tryal it will be brought to light : But I beseech your Favour , to take notice in the first place what Crime this Noble Lord stands accused of, and it is for Murder, wherein our Law takes notice, that Murder is where a Man unlawfully kills another under the Kings Peace, with Malice forethought. Now that here is a Murder committed, I dare with all humily averre : by whom, that is the question? for this *Robert Clerk* the Person killed, doth appear by the Course of the Evidence to have been doing his Duty, attending the place his Employment required; gave no offence to any whatsoever , but when the Person came down and fell upon him , the poor Youth cryed, indeed, my Lord, it was not I ; yet my Lords, the Hands of Violence seized him and killed him , Let us then see how the Evidence brings it home to the Noble Lord the Prisoner at the Bar; wherein I must confess we have no express Evidence (nay we have Evidence to the contrary) that it was not his hand that did the Fact actually, for it is by two Witnesses ; the Footmen swore that it was Mr. *Gerrard* who came down and gave the unfortunate Blow : But we have that which we think with humble submission may reach this Noble Lord : for I know your Grace and my Lords remember, that after they had been an hour in the Park, both returning, did with horrid Oathes swear they would kill the Centinel ; there the Evidence fixeth it, not upon one only, but upon both; It was at that time so dark, they could not be distinguished, but by

the voice: the Centinel hath given you an account how he performed his duty, and in what Straight he was, he had much ado to ſave his own Life, or to prevent killing them: But when they came upon the Stairs, theſe two Boys came there in order to deſire the Centinel to call one of them the next morning. Then one on the Stairs (no man can tell who it was) with horrid Execrations, askt, will you command the Kings Soldiers? ſhoot him, Centinel, we'l bear you out; but all this while it was dusk, no diſtinction of Perſons could be made, whereupon it will fall out to come to this Caſe, If ſeveral Perſons intend to kill one, and happen to kill another, whether this be not Murder in them? For the urging of this, as to the matter in *Law*, I leave to him that comes after me: the Centinel ſwears one of them did ſwear he would kill one or other; who it was took up that cruel Reſolution, is left to you to judge. But at that time they were both together upon the Top of the Stairs; and my *Lord* doth not ſeem to give one Title of Evidence that ſhews any Endeavours of the Priſoner at the Bar, to prevent the other, or diſprove of his Actions; If he had given an account of that, he had ſilenced Juſtice: But when they were all together, he not endeavouring to ſtop his hand; It is as much in *Law* as if he had ſtrook the ſtroak.

The other Soldiers give you a Particular Account to the ſame Purpoſe.

The two laſt Witneſſes do bring it to the Perſon of my *Lord* the Priſoner at the Bar, and Mr. *Gerrard*, who, they ſwore, came down the Stairs, and his Man followed him to the Bottom, and there ſtaid at ſome diſtance, till the Fact was done, and they all fled.

This I take to be the matter of Fact faithfully proved, before your Grace, and the *Lords* the Peers, and I would not trouble your Grace longer, becauſe I would not miſreport any thing, whereby I might do wrong, either to the Priſoner, or the Kings Cauſe; and becauſe I know your Grace and the Noble *Lords* will diſtinguiſh and find out where the truth is: I muſt ſay it is a great comfort to all the Subjects of *England*, that Crimes of this Nature are ſo carefully preſented, that whatſoever Honours and Dignities our *Gratious* Sovereign doth confer on any Perſon, it doth not exempt him from the Juſtice of the *Law*: It is not only a Comfort to this Aſſembly, but to the whole Nation, to ſee the King tender of his Subjects Perſons and lives, in that he hath cauſed this ſtrict Courſe to be taken, where the enquiry hath gone from the *Grand* Jury of the County, till the Bill came to this great Tribunal; where I doubt not but your *Grace* and theſe Noble Lords will give a righteous and juſt Judgement.

Then Serj. *Maynard* concluded Thus;

Serj. Maynard. May it pleaſe your *Grace*, my *Lord* High Setward of *England*, and my Noble *Lords* the Peers.

I according to the duty of my place, come now to conclude the charge on

on the King's behalf; ſome things are fit to be obſerved upon the Evidence, that may produce a queſtion for the deciſion of the Fact, of what nature it is, that a murder is committed, is upon Evidence without all queſtion; and not only the death of a man, here is a Child ſlain, without any provocation in the world given by him to that Perſon that did it, and that did it too, notwithſtanding the deprecations of the Boy, affirming his own Innocency, and that with as full Circumſtances, as a Chriſtian almoſt could a thing: theſe came from the Kings Palace walk in the Park; call the Centinel Rogue, and when he doth his duty, ſwear to murther him; with Oaths, that a Chriſtian would bluſh at, and be afraid to hear; *God damme* oftentimes reiterated; and he that ſaith that word, doth beg of God to hate him, and affirm that he doth hate God. The Obſcenity that they uſed, I ſhall not mention again; theſe are Circumſtanes of the Caſe; that all were guilty of much, is no doubt; but who, of the murder, is the queſtion; And I humble conceive, it is manifeſt, that this Noble *Lord* was concerned in it. For it is not requiſite, to make a Murder; that he who kills a man, hath conceived a malice againſt him; for if I have a malice againſt any man, and the effect of that fall upon another, it is murder.

I apply it thus, if it be a murder in Mr. *Gerrard*, if this Noble *Lord* partake with him in the deſign, which made it ſo; to wit, the malice againſt the Centinel, he is as guilty, as if his hand had been as much upon him, as was Mr. *Gerrards*, as in that known Caſe of the man that poiſoned an Apple, with an intention to kill his wife, and ſhe not knowing of the Poiſon, gave ſome of it to her Chlid, of which it died, though he had no deſign to kill the Child, yet, the malice he had conceived againſt his wife ſupply'd the defect of an expreſs malice to make it murther; and he was hanged therefore. So if a man aſſault a *Maſter*, in the preſence of his Servant, who defends his Maſter, and is ſlain, though the other had no purpoſe to kill him, yet it is Felony in him, for which he ſhall die; the Law implying a malice. Then here was clearly a malice to the Centinel; how neer it comes to the Boy, will come in queſtion afterwards. I find the Objection made in my Lord's Caſe, That at the particular time wherein the Fact was committed, my Lord was not with Mr. *Gerrard*: but that will be no Objection in the Caſe; for if he did partake in the Deſign of the other, I will anſwer it with the Caſe of my Lord *Dacres* of the South, who with ſome other went unlawfully to ſteal Deer, and the Keeper coming, ſome fled, among whom, my Lord was one: the Keeper was killed, my Lord *Dacres* being at that time without the Pales, a Mile off from the Place, and yet was found guilty of the Murther, and left both his Lands and his Life for it. But here my Lord *Conwallis* was preſent, for the Witneſs ſwears the Diſtance was not ſo great, but it might be diſcerned. Now whether he was aiding or aſſiſting, is the next thing in queſtion. What occaſion had they of Malice, Revenge or Injury to the Centinel? They both ſwore

Sanders Caſe in Plowden, fol. 473.

Anno 33 H. 8. Coke, 3 Inſt. fol. 211.

ſwore they would kill him: had there been any excuſe for the other, if one of them had killed the Centinel? that could not be: well, they did not kill the Centinel, but at the ſame time take up a cauſeleſs offence againſt another, and kill him: I argue, that the Malice againſt the Soldier, was diffuſive to the Boy; and one of the Witneſſes proves, that one of them ſwore he would kill ſome Body: now, no one ſpeaks to any thing of my Lords reproving Mr. *Gerrard*. Thus ſtands the Caſe before your Grace and my Lords; It is a Caſe of Blood, and it cries loud: how far this Noble Lord and Priſoner at the Bar is guilty thereof, you are to enquire, and without all doubt will give a clear Verdict, according to Juſtice and Honour.

Lord High Stew. My Lords, you have heard the Evidence of your Lordſhips; Pleaſe, to go and conſider of it, you may.
Then the Priſoner withdrew into his own apartment, with the Lieutenant of the Tower. The Lords went into a Room behind the Court of *Chancery*, and after a ſtay of two hours, return'd, and being all ſate; the Earl of *Danby*, Lord High Treaſurer of *England*, who was the firſt of the Jury, addreſſed himſelf to my Lord High Steward, and ſaid;

Earl of *Danby*. *My Lord High Steward*; there is a queſtion in Law, of which ſome of my Lords deſire to receive ſatisfaction, before they can give in their full Verdict: and we deſire to know of your Grace, whether it be proper here to ask the queſtion of your Grace, or to propoſe it to the Judges.

Lord H. Stew. If your Lordſhips doubt of any thing, whereon a queſtion in Law ariſeth, the latter opinion, and the better for the Priſoner is, that it muſt be ſtated in the preſence of the Priſoner, that he may know whether the queſtion be truly put. It hath ſometimes been practiſed otherwiſe; and the Peers have ſent for the Judges, and have asked their opinion in private, and have come back, and given their Verdict, according to that opinion; and there is ſcarce a Preſident of its being otherwiſe done; but there is a latter Authority in Print, that doth ſettle the Point ſo as I tell you; and I do conceive it ought to be followed; and it being ſafer for the Priſoner, my humble Opinion to your Lordſhips, is, that he ought to be preſent at the ſtating of the Queſtion.

Cooke Inſtfol. 3,o. Paſch. 20. Hen.

Call the Priſoner to the Bar.

Who being come, my Lord ſpake thus to him:

Lord High Steward. My Lord *Conwallis*, My Lords the Peers, ſince they have withdrawn, have conceived a doubt, in ſome matter of Law ariſing upon the matter of Fact in your Caſe; and they have that tender regard of a Priſoner at the Bar, that they will not ſuffer a Caſe to be put up in his abſence, leſt it ſhould chance to prejudice him, by being wrong ſtated; therefore, your Lordſhip will do well, to attend the queſtion that is raiſed; and, my Lords, will you pleaſe to propound your doubts?

It

It was taken notice of here, that by opening the matter by Mr. Solicitor, the matter of Murder was explained, to be meant by having a prepenſed Malice, and in that Caſe it was opened to us, that any Perſons then preſent, and that had in any ſort contributed to the Diſorders, they were as equally guilty, as they whoſe hand had ſhed the Blood of the Perſon killed. *Earl of* Danby.

Now the doubt of ſome of my Lords is, whether if it be found but Man-ſlaughter, thoſe are equally guilty, that are preſent (and have proved to contribute to the diſturbance) of that Crime, as they are in Murder; becauſe ſome of them have not the ſatisfaction that they are the ſame.

Lord High Steward. My Lords the Judges, I take it, the doubt propoſed to you, is this; whether or no, thoſe that are preſent, and have contributed to the diſorders, whereby ſuch an accident doth enſue, as proves to be Man-ſlaughter, be as culpable, as he that doth the immediate Fact, as it is in the Caſe of Murder?

After a little Pauſe and Conference, the Judges returned this Anſwer.

Judges. We have had Conference of this Caſe, and our humble Opinion is, If ſundry Perſons be together, aiding and aſſiſting to an Action, wherein a Man-ſlaughter doth enſue, as in Caſe of a ſudden buſineſs without malice prepenſed, they are equally guilty with the Man-ſlaughter, as they are in the Caſe of Murder prepenſed.

Earl of *Danby.* The Lords deſire to withdraw once more, which they did, and after a ſhort ſpace returned; and being called over, anſwered to their Names, and all appearing, my *Lord High Steward*, took their Verdict *ſeriatim*, beginning at the Puiſne Lord in the following orders, they anſwering, ſtanding bare with their hands on their Breaſts.

Lord High Steward. My Lord *Duras*, Is *Charles* Lord *Conwallis* guilty of the Felony and Murder, whereof he ſtands Indicted, or not guilty?

Lord *Duras*, not guilty.

The ſame queſtion he demanded of each; who anſwered thus:

My Lord *Butler*, not guilty.

Lord not guilty.

Lord *Maynard*, not guilty of *Murder*, but guilty of *Man*-ſlaughter.

Lord *Paget*, not guilty.

Lord *Berkly*, not guilty of Murder, but guilty of Man-ſlaughter.

Lord *Newport*, not guilty.

Lord *Hallifax*, not guilty.

Lord Viſcount *Cambden*, not guilty.

Lord *Guilford* not guilty.

Lord *Aliſbury*, not guilty of Murder, but guilty of Man-ſlaughter.

Lord *Craven*, not guilty.

Lord *Bath*, not guilty.
Lord *Clarendon*, not guilty.
Lord *Sunderland*, not guilty.
Lord *Peterborough*, not guilty.
Lord *Devonſhire*, not guilty.
Lord *Northampton*, not guilty.
Lord *Bridgwater*, not guilty.
Lord *Dorſet*, not guilty.
Lord *Suffolk*, not guilty.
Lord *Bedford*, not guilty.
Lord *Derby*, not guilty.
Lord *Kent*, not guilty.
Lord *Oxford*, not guilty.
Lord *Arlington*, not guilty.
Lord *Brereton*, not guilty.
Lord *Lindſey*, not guilty of Murder, but of Man-ſlaughter.
Lord *Dorcheſter*, not guilty.
Lord *Angleſey*, not guilty of Murder, but of Man-ſlaughter.
Lord *Danby*, not guilty of Murder, but of Man-ſlaughter.

Lord High Steward. Call the Priſoner to the Bar.

Then the Priſoner came to the Bar, and the Deputy Lieutenant of the Tower held the edge of the Axe towards him, while my Lord High Steward ſpake thus unto him,

Lord High Steward. My Lord *Conwallis*, you have been Indicted for Murder, pleaded not guilty, put your ſelf upon your Peers; and your Peers upon conſideration of the whole matter, have acquitted you, and found you not guilty, ſo you are to be diſcharged.

Cl. Cr. Make Proclamation.

Serj. O Yes, my Lord High Steward of *England* willeth and commandeth all Perſons, to depart hence in Gods Peace and the Kings; for my Lord High Steward of *England* his Grace doth diſſolve his Commiſſion.

God ſave the King.

At which words my Lord High Steward holding the white Staff (which was delivered him by the Uſher of the Black Rod on his Knees) in both hands over his head, ſnapt it in two, and the Aſſembly broke up.

FINIS

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